

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1790 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE D.G.KARIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? yes
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
2 to 5 No.

HANSABEN

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Versus

STATE OF GUJARAT

Appearance:

MR DR BHATT for Petitioner

MR.U.A.TRIVEDI,ADDL.PUBLIC PROSECUTOR for Respondent No. 1

MR JB PARDIWALA for Respondent No. 2

CORAM : MR.JUSTICE D.G.KARIA

Date of decision: 18/01/97

ORAL JUDGEMENT

The petitioner has challenged the validity and levality of the concurrent orders passed by both the Courts below whereby the respondent No.2-accused was ordered to be discharged under section 245(1) of the Code

of Criminal Procedure, 1973. By the order dated October 28, 1988, the learned Judicial Magistrate, First Class, at Umargaon, taking all the evidence into consideration and after recording reasons that no case has been made out in respect of the offences under sections 417 and 420 of the Indian Penal Code against the respondent-accused, ordered him to be discharged under section 245(1) of the Code. The petitioners, being aggrieved by the said order, preferred Criminal Revision Application No.66/88 in the Sessions Court at Valsad. The learned Additional Sessions Judge, Valsad at Navsari, who disposed of the said revision application, was pleased to reject it, confirming the judgment and order passed by the learned Magistrate. Both these orders are under challenge in this petition.

The petitioner-original complainant lodged the Criminal Case No.2554/86 against the respondent-accused for the offences under sections 417 and 420 of the Indian Penal Code in the Court of the Judicial Magistrate, First Class at Umargaon alleging that the accused misrepresented to her of he being desirous of getting married to her and both of them were in love. On account of love affairs between them, there was cohabitation, as a result of which the complainant-petitioner had become pregnant. She gave birth to a female child on June 12, 1987 at Dehra Primary Health Centre. The accused, however, refused to marry with the petitioner later on. Under these facts and circumstances, the aforesaid complaint came to be lodged by the petitioner for the offences under sections 417 and 420 of the Indian Penal Code.

The learned Magistrate, after recording necessary evidence as was placed before him, came to the conclusion that there was no prima facie case nor any case was made out against the accused person for framing the charge in respect of the aforesaid offences. Accordingly, he ordered to discharge the accused. On revision being preferred by the petitioner herein, the judgment of the Court at first instance was confirmed by the revisional court holding, inter alia, that there was no error committed by the learned Magistrate in discharging the accused.

I have heard Mr.D.R.Bhatt, learned Advocate appearing for the petitioner. I have also heard Mr.J.B.Pardiwala, for the respondent-accused, and Mr.U.A.

Trivedi, learned Addl. Public Prosecutor, for the respondent-State.

No case is made out to interfere with the findings recorded by both the Courts below. In overall facts and circumstances of the case, the view taken by both the Courts below on basis of the evidence adduced before the trial Court that no case of cheating can be said to be constituted nor it was proved that cohabitation was permissible between the parties according to the custom of the caste is just and proper.

The present petition is in the form of second revision application which will not be maintainable in law. The Sessions Court dismissed the first revision application of the petitioner herein. In facts and in effect, the present petition is in form of the second revision application, which is not maintainable in law, in view of the decision in the case of DEEPTI ALIAS ARATI RAI v. AKHIL RAI AND OTHERS, 1995 Supreme Court Cases (Cri) 1020. On this count also, the petition is liable to be dismissed.

In the result, the petition is dismissed. Rule discharged.
